

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CROATIA AND THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Croatia and the Federal Government of the Federal Republic of Yugoslavia (hereinafter the "Contracting Parties");

Desiring to promote greater economic cooperation between them, with respect to investment by nationals and legal entities of one Contracting Party in the territory of the other Contracting Party;

Recognizing that agreement upon the treatment to be accorded to such investment will stimulate the flow of private capital and the economic development of the Contracting Parties;

Agreeing that a stable framework for investment will maximize effective utilization of economic resources and improve living standards;

Having resolved to conclude the Agreement on the reciprocal promotion and protection of investments;

Have agreed as follows:

Article 1. Definitions

For the purposes of the Agreement:

1. The term "investment" means every kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular, though not exclusively:

a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufructus and similar rights;

b) Stock, shares, debentures and other forms of participation in companies;

c) Claims to money or to any performance having an economic value;

d) Intellectual property rights, as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organisation, in as far as both Contracting Parties are parties to them, including, but not limited to, industrial property rights, copyrights and neighbouring rights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;

e) Rights to engage in economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment. 2. The term "investor" means in respect of either Contracting Party:

a) A natural person having the nationality of a Contracting Party who makes an investment in the territory of the other Contracting Party;

b) A legal person incorporated, constituted or otherwise duly organised in accordance with the laws and regulations of one Contracting Party, having its seat and performing real business activity in the territory of that Contracting Party and making an investment in the territory of the other Contracting Party;

3. The term "returns" means income deriving from an investment and includes, in particular though not exclusively, profits,

dividends, interests, capital gains, royalties, patents licence fees, and other fees.

4. The term "without delay" shall mean such period as is normally required for the completion of necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed one month.

5. The term "freely convertible currency" shall mean any currency that the International Monetary Fund determines, from time to time, as freely usable currency in accordance with the Articles of Agreement of the International Monetary Fund and any amendment thereto.

6. The term "territory" means:

– With respect to the Republic of Croatia: the territory of the Republic of Croatia as well as those maritime areas adjacent to the outer limit of the territorial sea including the seabed and subsoil over which the Republic of Croatia exercises, in accordance with international law, its sovereign rights and jurisdiction.

– With respect to the Federal Republic of Yugoslavia: the territory of the Federal Republic of Yugoslavia as well as those maritime areas adjacent to the outer limit of the territorial sea including the seabed and subsoil over which the Federal Republic of Yugoslavia exercises, in accordance with international law, its sovereign rights and jurisdiction.

Article 2. Promotion and Admission of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour to inform the other Contracting Party, at the request of either Contracting Party, on the investment opportunities in its territory.

3. Each Contracting Party shall grant, whenever necessary, in accordance with its laws and regulations, without delay, the permits required in connection with the activities of consultants or experts engaged by investors of the other Contracting Party.

4. Each Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith and give due consideration, regardless of nationality to requests of key personnel including top managerial and technical persons who are employed for the purposes of investments in its territory, to enter, remain temporary and work in its territory. Immediate family members of such key personnel shall also be granted similar treatment with regard to the entry and temporary stay in the host Contracting Party.

Article 3. Protection of Investments

Each Contracting Party shall extend in its territory full legal protection and security to investments and returns of investors of the other Contracting Party. Neither Contracting Party shall hamper, by arbitrary or discriminatory measures, the development, management, maintenance, use, enjoyment, expansion, sale and if it is the case, the liquidation of such investments. Either Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party. Investments or returns of investors of either Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment in accordance with international law and provisions of this Agreement.

Article 4. National Treatment and Most Favoured Nation Treatment

1. Neither Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party a treatment less favourable than that which it accords to investments and returns of its own investors, or investments and returns of investors of any other third State, whichever is more favourable to investors.

2. Neither Contracting Party shall accord in its territory to the investors of the other Contracting Party, as regards management, maintenance, enjoyment, use or disposal of their investment, a treatment which is less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to investors.

3. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

- a) Any existing or future customs union or economic union, free trade area or similar international agreements to which either of the Contracting Party is or may become a Party in the future;
- b) Any international agreement or arrangement, completely or partially related to taxation.

Article 5. Expropriation

1. A Contracting Party shall not expropriate or nationalise directly or indirectly an investment in its territory of an investor of another Contracting Party or take any measure or measures having equivalent effect (hereinafter referred to as "expropriation") except:

- a) For a purpose which is in the public interest,
- b) On a non-discriminatory basis,
- c) In accordance with due process of law, and
- d) Accompanied by payment of prompt, adequate and effective compensation.

2. Compensation shall be paid without delay.

3. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation occurred. The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

4. Compensation shall be fully realisable and freely transferable.

5. Due process of law includes, in particular, the right of an investor of a Contracting Party which claims to be affected by expropriation by another Contracting Party to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.

Article 6. Compensation for Damages or Loss

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events in the territory of the other Contracting Party they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than the treatment that the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable to investors.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

- a) Requisitioning of their property or part thereof by its forces or authorities;
- b) Destruction of their property or part thereof by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded a prompt restitution, adequate and effective compensation for the damage or loss sustained during the period of requisitioning as a result of destruction of their property. Resulting payments shall be made in freely convertible currency and be freely transferable without undue delay.

Article 7. Transfers

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of another Contracting Party may be freely transferred into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:

- a) The initial capital and additional amounts to maintain or increase an investment;
- b) Returns;
- c) Payments made under a contract including a loan connected with the investment;

- d) Proceeds from the sale or liquidation of all or any part of the investment;
- e) Payments of compensation under Articles 5, 6 and 8 of this Agreement;
- f) Payments arising out of the settlement of an investment dispute under Articles 10 and 11 of this Agreement;
- g) Earnings and other remuneration of personnel engaged from abroad in connection with an investment.

2. Each Contracting Party shall ensure that the transfers under paragraph 1 of this Article are made in a freely convertible currency at the official rate of exchange valid on the date of transfer in the territory of the Contracting Party in which the investment is made.

3. Each Contracting Party shall ensure that the interest at LIBOR rate is calculated together with compensation for the period starting from the occurrence of events under Articles 5, 6 and 8 until the date of transfer of payment and payment will be effected in accordance with provisions of paragraphs 1 and 2 of this Article.

Article 8. Subrogation

1. If one Contracting Party or its designated Agency (for the purpose of this Article: the "First Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party (for the purpose of this Article: the "Second Contracting Party"), the Second Contracting Party shall recognise:

- a) The assignment to the First Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified; and
- b) That the First Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified, and shall assume the obligations related to the investment.

2. The First Contracting Party shall be entitled in all circumstances to:

- a) The same treatment in respect of the rights, claims and obligations acquired by it, by virtue of the assignment; and
- b) Any payments received in pursuance of those rights and claims,

As the party indemnified was entitled to receive it by virtue of this Agreement, in respect of the investment concerned and its related returns.

Article 9. Application of other Obligations

If the provisions of law of either Contracting Party or international obligations existing at present or established thereafter between the Contracting Parties in addition to this Agreement, contain a rule, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rule shall to the extent that it is more favourable prevail over this Agreement.

Article 10. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any investment dispute between a Contracting Party and an investor of the other Contracting Party shall be settled by negotiations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six (6) months of a written notification, the dispute shall be upon the request of the investor submitted for resolution:

- a) To a competent court of the Contracting Party, or
- b) To arbitration in accordance with this Article under: the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("ICSID Convention"), opened for signature in Washington on March 18th, 1965, if the ICSID Convention is available; or the Additional Facility Rules of the International Centre for Settlement of Investment Disputes ("ICSID Additional Facility"), if the ICSID Additional Facility is available; or the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"); or the Rules of Arbitration of the International Chamber of Commerce ("ICC").(i) The Convention on the Settlement of Investment Disputes between States and Nationals of other States ("ICSID Convention"), opened for signature in Washington on March 18th, 1965, if the ICSID Convention is available; or

(ii) The Additional Facility Rules of the International Centre for Settlement of Investment Disputes ("ICSID Additional Facility"), if the ICSID Additional Facility is available; or

(iii) The Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL"); or

(iv) The Rules of Arbitration of the International Chamber of Commerce ("ICC").

3. The consent given by a Contracting Party under paragraph 2, together with either the written submission of the dispute to resolution by the investor or the investor's advance written consent to such submission, shall constitute the written consent and the written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the ICSID Convention, the ICSID Additional Facility Rules, Article 1 of the UNCITRAL Arbitration Rules, the Rules of Arbitration of the ICC and Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").

4. The award shall be final and binding, it shall be executed according to the national law, each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its relevant laws and regulations.

5. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of a guarantee in respect of all or a part of its losses.

Article 11. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute according to paragraph (1) of this Article cannot be settled within six (6) months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

3. Such arbitral tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one arbitral and these two arbitrals shall agree upon a national of a third State as their chairman. Such arbitrals shall be appointed within two (2) months from the date one Contracting Party has informed the other Contracting Party, of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two (2) further months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-President or in case of his inability the member of the International Court of Justice next in seniority should be invited under the same conditions to make the necessary appointments.

5. The tribunal shall establish its own rules of procedure.

6. The arbitral tribunal shall reach its decision in virtue of the present Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal shall decide on the final payment of the costs, taking into account the adjudication of the dispute and the responsibility for the occurrence of these costs.

Article 12. Application of the Agreement

This Agreement shall apply to investments made after its entry into force and shall by no means be applied to the investments made prior to its entry into force.

Article 13. Duration and Denunciation

1. This Agreement shall enter into force on the date of receipt of the latter notification through diplomatic channels by which either Contracting Party notifies the other that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of ten (10) years and shall be extended thereafter for following ten years periods unless, one year before the expiration of the initial or any subsequent period, either Contracting Party notifies the

other Contracting Party of its intention to denounce the Agreement. In that case, the notice of denunciation shall become effective by the expiration of current period of ten (10) years.

3. In respect of investments made prior to the date when the notice of denunciation of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of ten (10) years from the date of denunciation of this Agreement.

Done in Zagreb on 18th August 1998 in two original versions, in Croatian, Serbian and English languages, all three texts being equally authentic. In a case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF CROATIA

FOR THE FEDERAL GOVERNMENT OF THE FEDERAL REPUBLIC OF YUGOSLAVIA